IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 6, 2005

DEBORAH BELL v. BILLY DEAN GOFORTH ET AL.

Appeal from the Chancery Court for Davidson County
No. 02-642-I Claudia Bonnyman, Chancellor

No. M2004-00997-COA-R3-CV - Filed March 14, 2006

This appeal involves a former employee's efforts to collect a judgment against two defunct corporations. The employee filed a Title VII complaint against the two corporations in the United States District Court for the Middle District of Tennessee and obtained a default judgment against them. A federal jury thereafter awarded the employee a $928,556 judgment against the two corporations. Three years later, the employee sued one of the corporations and two of its officers in the Chancery Court for Davidson County alleging that they had fraudulently transferred corporate assets to place them beyond her reach. One of the officers filed a motion for summary judgment based on the three-year statute of limitations in Tenn. Code Ann. § 28-3-105 (2000). The trial court granted the motion, and the employee appealed. We have determined that the claims against the corporate officer should have been dismissed, not because of the statute of limitations, but because the undisputed facts demonstrate that the officer played no role in the disposal of the corporate assets.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ., joined.

Larry L. Crain, Brentwood, Tennessee, for the appellant, Deborah Bell.

Wm. Robert Pope, Mary Taylor Gallagher, and Mary Beth Hagan, Nashville, Tennessee, for the appellee, Billy Dean Goforth.

OPINION

I.

Deborah Bell worked as a social worker and counselor for Comprehensive Therapies, Inc. ("Comprehensive Therapies") from April 18, 1994 through March 15, 1995. Comprehensive Therapies provided staffing and other services by contract to Century Home Health Care of Dickson,

Inc. ("Century Home Health Care").[1] In May 1994, after one of Century Home Health Care's patients declined to accept services from Ms. Bell, apparently because of Ms. Bell's race, Comprehensive Therapies and Century Home Health Care informed Ms. Bell that she would no longer be assigned to that patient. In November 1994, Ms. Bell filed a discrimination complaint against Comprehensive Therapies and Century Home Health Care with the Equal Employment Opportunity Commission (EEOC) based on the May 1994 incident.

In July or August 1996, while Ms. Bell's complaint was pending before the EEOC, Messrs. Goforth and Gilley sold Century Health Services, Inc. ("Century Health Services") and all its subsidiaries, including Century Home Heath Care, to Integrated Health Services, Inc. for $2,300,000.[2] As far as the Secretary of State's records show, Century Health Services was administratively dissolved on September 19, 1997.

Also in mid-1996, on or about the time of the sale of Century Health Services, Mr. Goforth sold his interest in Comprehensive Therapies back to the corporation and had no further connection with the business after that time. Comprehensive Therapies was apparently sold four to six months later. Mr. Goforth did not participate in the sale of the assets or stock of Comprehensive Therapies and received no funds from the sale of assets or stock of Comprehensive Therapies. According to the Secretary of State's records, Comprehensive Therapies' charter was revoked on September 18, 1998.

The EEOC eventually provided Ms. Bell a "right to sue letter," and on July 28, 1998, she filed a suit in the United States District Court for the Middle District of Tennessee, alleging that Century Home Health Care and Comprehensive Therapies had violated Title VII of the Civil Rights Act of 1964. The District Court entered a default judgment against the two corporations on February 16, 1999, and on May 4, 1999, a jury awarded Ms. Bell a $928,556 judgment against the two dissolved corporations.

When Ms. Bell attempted to collect her judgment, she discovered that Messrs. Goforth and Gilley were no longer residing in Tennessee. She finally located Mr. Goforth in Florida and Mr. Gilley in Illinois. Ms. Bell states that she learned for the first time during Mr. Goforth's January 25, 2001 deposition that both Century Health Services and its subsidiaries, as well as Comprehensive Therapies, had been sold and that the corporations were no longer in existence. As far as this record shows, Ms. Bell never deposed Mr. Gilley before his death in November 2001.

On February 27, 2002, Ms. Bell filed a complaint in the Chancery Court for Davidson County against Mr. Gilley's estate, Mr. Goforth, and Comprehensive Therapies.[3] She asserted that the sale of Comprehensive Therapies was a fraudulent transfer undertaken to prevent her from recovering

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[1] Billy Dean Goforth and George Gilley were the sole shareholders of these two corporations.

[2] The appellate record contains no information regarding the terms of the sale. However, Mr. Goforth testified that Integrated Health Services later filed for bankruptcy.

[3] On April 23, 2003, Ms. Bell took a voluntary non-suit against Mr. Gilley's estate.

her judgment against Comprehensive Therapies and Century Home Health Care and requested the trial court to impose a constructive trust on the proceeds of the sale.

On October 22, 2003, Mr. Goforth moved for a summary judgment based on the three-year statute of limitations in Tenn. Code Ann. § 28-3-105 (2000). Ms. Bell responded on January 16, 2004, asserting that her claim was not time-barred because Mr. Goforth had concealed the corporate status of Comprehensive Therapies from her. She also argued that she did not discover that Comprehensive Therapies had been dissolved until January 2001 when she deposed Mr. Goforth and that she filed her complaint within three years thereafter.

On February 27, 2004, the trial court denied Mr. Goforth's summary judgment motion but gave him permission to present additional evidence regarding Ms. Bell's constructive notice of the dissolution of Comprehensive Therapies. Thereafter, Mr. Goforth filed certified copies of the Secretary of State's records showing that the corporate charter of Comprehensive Therapies had been revoked on September 18, 1998. He also filed a motion requesting the trial court to reconsider its denial of his summary judgment motion. On March 31, 2004, the trial court entered an order granting Mr. Goforth's motion to reconsider, as well as his motion for summary judgment. Ms. Bell has appealed.

II.
THE STANDARD OF REVIEW FOR SUMMARY JUDGMENTS

The standards for reviewing summary judgments on appeal are well settled. Summary judgments are proper in virtually any civil case that can be resolved on the basis of legal issues alone. *Fruge v. Doe*, 952 S.W.2d 408, 410 (Tenn. 1997); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001). They are not, however, appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. Thus, a summary judgment should be granted only when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion – that the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001).

Summary judgments enjoy no presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003); *Scott v. Ashland Healthcare Ctr., Inc.*, 49 S.W.3d 281, 285 (Tenn. 2001). Accordingly, appellate courts must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). We must consider the evidence in the light most favorable to the non-moving party, and we must resolve all inferences in the non-moving party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001). When reviewing the evidence, we must determine first whether factual disputes exist. If a factual dispute exists, we must then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d at 214; *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

III.
MR. GOFORTH'S ROLE IN THE SALE OF COMPREHENSIVE THERAPIES

The parties have focused the arguments in their appellate briefs on the application of the three-year statute of limitations in Tenn. Code Ann. § 28-3-105 to this case. However, we have determined that Ms. Bell's claims against Mr. Goforth should be analyzed on a different basis. A statute of limitations defense necessarily presupposes that the plaintiff has stated a claim but asserts that the claim is time-barred. Thus, before addressing the merits of Mr. Goforth's statute of limitations defense, we must first determine whether the undisputed facts make out a fraudulent transfer claim against him. We have concluded that undisputed facts permit only one conclusion – that Ms. Bell cannot successfully assert a fraudulent transfer claim against Mr. Goforth with regard to the sale of the assets of Comprehensive Therapies.

A.

Ms. Bell filed a creditor's bill pursuant to Tenn. Code Ann. §§ 29-12-101 to -109 (2000) seeking to set aside the sale of the assets of Comprehensive Therapies as a fraudulent transfer.[4] Tenn. Code Ann. § 29-12-101 provides that:

> [a]ny creditor, without first having obtained a judgment at law, may file the bill in chancery for the creditor, or for the creditor and other creditors, to set aside fraudulent conveyances of property, or other devices resorted to for the purpose of hindering and delaying creditors, and subject the property, by sale or otherwise, to the satisfaction of the debt.

Ms. Bell qualifies as a creditor for the purposes of Tenn. Code Ann. § 29-12-101 because she was a judgment creditor of the two corporations when she filed her petition. *See Shepard v. Lanier*, 192 Tenn. 608, 624, 241 S.W.2d 587, 594 (1951).[5]

A transfer will be deemed fraudulent if it is made without fair consideration or if it is made with the intent to hinder, delay, or defraud creditors. *Hicks v. Whiting*, 149 Tenn. 411, 444, 258 S.W. 784, 794 (1924); *Macon Bank & Trust Co. v. Holland*, 715 S.W.2d 347, 349 (Tenn. Ct. App. 1986). Persons seeking to set aside an alleged fraudulent transfer need not prove that the transferor actually intended to ultimately defraud its creditors, as long as they have presented proof of the transferor's intent to hinder or delay them. *M. & N. Freight Lines, Inc. v. Kimbel Lines, Inc.*, 180 Tenn. 1, 7-8,

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[4] Ms. Bell's complaint did not include a claim based on Tennessee's version of the Uniform Fraudulent Transfer Act [Tenn. Code Ann. §§ 66-3-301 to -313 (2004)].

[5] In fact, Ms. Bell would have qualified as a creditor even if she had not yet obtained a judgment against the two corporations. The plaintiff in a tort action is a "creditor" for the purpose of a fraudulent transfer claim. *Oliphant v. Moore*, 155 Tenn. 359, 362, 293 S.W. 541, 542 (1927). Thus, a voluntary transfer by a defendant intended to defeat a possible recovery in a pending tort action may be set aside as a fraudulent transfer. *See generally Farnsworth v. Bell*, 37 Tenn. (5 Sneed) 531 (1858).

170 S.W.2d 186, 186-87 (1943); *City of Milan Hosp. v. Ferrell*, No. 02A01-9703-CH-00068, 1998 WL 12674, at *2 (Tenn. Ct. App. Jan. 15, 1998) (No Tenn. R. App. P. 11 application filed). Likewise, persons who present proof of actual intent to hinder, delay, or defraud creditors need not prove that the defendant was insolvent when the transaction occurred or that the transaction itself rendered the defendant insolvent. *McConnico v. Third Nat'l Bank*, 499 S.W.2d 874, 887 (Tenn. 1973).

Whether a particular transfer is fraudulent depends on the facts and circumstances of each case. *Macon Bank & Trust Co. v. Holland*, 715 S.W.2d at 349. The burden of proof is on the party seeking to set aside an allegedly fraudulent transfer. *United Nat'l Real Estate, Inc. v. Thompson*, 941 S.W.2d 58, 62-63 (Tenn. Ct. App. 1996); *Citizens Bank & Trust Co. v. White*, 12 Tenn. App. 583, 590 (1930). Because fraudulent transferors rarely disclose their intent in a way that is capable of direct evidence, persons seeking to set aside fraudulent transfer must frequently resort to circumstantial evidence. *McConnico v. Third Nat'l Bank*, 499 S.W.2d at 887. The circumstances that permit the trier-of-fact to conclude that a particular transfer was fraudulent are commonly referred to as "badges of fraud." Any circumstance that throws sufficient suspicion on the challenged transaction to require an explanation is a "badge of fraud." *Macon Bank & Trust Co. v. Holland*, 715 S.W.2d at 349; *Bank of Blount County v. Dunn*, 10 Tenn. App. 95, 106-07 (1929).[6]

B.

The undisputed facts in this record cannot support a fraudulent transfer claim against Mr. Goforth with regard to the sale of the assets belonging to Comprehensive Therapies. Mr. Goforth testified without contradiction that in mid-1996 he sold his interest in Comprehensive Therapies back to the corporation and that he had no further connection with the corporation following that transaction.[7] It is likewise undisputed that the remaining owners of Comprehensive Therapies sold the company and its assets four to six months later.[8] Finally, it is undisputed that Mr. Goforth did not participate in the sale of the corporation's assets or stock, that he received none of the proceeds of the sale of the corporation's assets or stock,[9] and that the Secretary of State revoked the corporate charter of Comprehensive Therapies on September 18, 1998.

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[6]The "badges of fraud" most commonly noted by the courts include: (1) the transferor being in a precarious financial condition, (2) the transferor knew or believed that a large money judgment could be rendered against the transferor, (3) inadequate consideration for the transfer, (4) secrecy or haste in carrying out the transfer, (5) family or other close relationship between the transferor and transferee, (6) the transfer includes all or substantially all of the transferor's assets, (7) the transferor retained a life estate or other interest in the transferred property, (8) the lack of an innocent purpose for the transfer, and (9) the transferor's failure to offer evidence explaining away the suspicious nature of the transfer. *In re Hicks*, 176 B.R. 466, 470 (Bankr. W.D. Tenn. 1995).

[7]The last annual report that Comprehensive Therapies filed with the Secretary of State did not list Mr. Goforth as an officer or director.

[8]Ms. Bell offered no evidence to contradict Mr. Goforth's testimony during his January 25, 2001 deposition.

[9]Ms. Bell offered no evidence to contradict the statements in Mr. Goforth's September 25, 2003 affidavit.

To be successful on a fraudulent transfer claim, the plaintiff must prove that the defendant actually sold, conveyed, transferred, or encumbered the property sought to be recovered. Here, Ms. Bell has presented absolutely no evidence that Mr. Goforth played any role or received any benefit from the sale of Comprehensive Therapies. Accordingly, the undisputed facts support only one conclusion – that Mr. Goforth played no role in the ultimate transfer of the assets or stock of Comprehensive Therapies. Therefore, on this basis alone, Mr. Goforth was entitled to a judgment as a matter of law dismissing Ms. Bell's fraudulent transfer claim regarding the sale of the assets and stock of Comprehensive Therapies.[10]

Realizing the precariousness of her claim against Mr. Goforth, Ms. Bell insists that Mr. Goforth is not entitled to a summary judgment because the circumstances surrounding the sale of Comprehensive Therapies are unclear. She claims that several key facts regarding the transaction are missing and that Mr. Goforth is not entitled to a judgment as a matter of law until these facts are known.[11] The absence of these facts from the record – to the extent that they are material – is attributable to Ms. Bell.

Parties facing a summary judgment motion may not rest on the allegations in their pleadings. Tenn. R. Civ. P. 56.06. *Blair v. West Town Mall*, 130 S.W.3d 761, 767 (Tenn. 2004); *Carey v. Merritt*, 148 S.W.3d 912, 915 (Tenn. Ct. App. 2004). Once the moving party demonstrates that it has satisfied Tenn. R. Civ. P. 56's requirements, the non-moving party must demonstrate how these requirements have not been satisfied. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). Mere conclusory generalizations will not suffice. *Cawood v. Davis*, 680 S.W.2d 795, 796-97 (Tenn. Ct. App. 1984). The non-moving party must convince the trial court that there are sufficient factual disputes to warrant a trial (1) by pointing to evidence either overlooked or ignored by the moving party that creates a factual dispute, (2) by rehabilitating evidence challenged by the moving party, (3) by producing additional evidence that creates a material factual dispute, or (4) by submitting an affidavit in accordance with Tenn. R. Civ. P. 56.07 requesting additional time for discovery. *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22, 41 (Tenn. 2005); *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998); *Byrd v. Hall*, 847 S.W.2d at 215 n.6. A non-moving party who fails to carry its burden faces summary dismissal of the challenged claim because, as our courts have repeatedly observed, the "failure of proof concerning an essential element of the cause of action necessarily renders all other facts immaterial." *Alexander v. Memphis Individual Practice Ass'n*, 870 S.W.2d 278, 280 (Tenn. 1993); *Rains v. Bend of the River*, 124 S.W.3d 580, 588 (Tenn. Ct. App. 2003).

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[10] The Court of Appeals may affirm a judgment on different grounds than those relied on by the trial court when the trial court reached the correct result. *Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 789 (Tenn. Ct. App. 1999); *Allen v. National Bank of Newport*, 839 S.W.2d 763, 765 (Tenn. Ct. App. 1992); *Clark v. Metropolitan Gov't*, 827 S.W.2d 312, 317 (Tenn. Ct. App. 1991).

[11] For example, while Ms. Bell does not dispute Mr. Goforth's testimony that he sold all his interest in Comprehensive Therapies back to the corporation four to six months before the remaining owners sold the corporation's assets and stock, she insists that the precise date that Mr. Goforth sold his interest back to Comprehensive therapies is an indispensable fact.

Twenty months elapsed between the filing of Ms. Bell's fraudulent transfer claim against Mr. Goforth and the filing of Mr. Goforth's summary judgment motion. Ms. Bell had ample time to discover and produce evidence to support her own claims and to rebut Mr. Goforth's defenses. She never asserted that Mr. Goforth prevented her from discovering evidence favorable to her, and she has offered no other colorable excuse for the failure to present evidence to rebut Mr. Goforth's testimony. Thus, in light of the generous opportunity she had to gather and present evidence, her complaint that the factual circumstances surrounding the sale of Comprehensive Therapies has little merit.

IV.
THE APPLICATION OF THE STATUTE OF LIMITATIONS

Under most circumstances, affirming the trial court's decision to grant Mr. Goforth's motion for summary judgment would end the matter. However, more is left to do in this case because of the trial court's unusual decision to defer ruling on Ms. Bell's motion to amend her complaint until it had disposed of Mr. Goforth's motion for summary judgment. To avoid requiring the parties to engage in further and ultimately fruitless litigation, we will address Mr. Goforth's statute of limitations defense and Ms. Bell's response to this defense in light of the allegations in Ms. Bell's proposed amended complaint.

A.

Ms. Bell's original complaint was premised on her assumption that Mr. Goforth had been personally involved in the sale of the assets and stock of Comprehensive Therapies. On January 12, 2004, after she discovered that Mr. Goforth had sold his interest in Comprehensive Therapies back to the corporation months before its owners sold its assets and stock, Ms. Bell moved to amend her complaint to change her claim against Mr. Goforth. The focus of the proposed amended complaint was on Mr. Goforth's role in the sale of Century Health Services' assets and stock. Ms. Bell alleged in the amended complaint that the sale of Century Health Services' assets and stock was a fraudulent transfer.

Ms. Bell filed her motion to amend after Mr. Goforth's summary judgment motion had already been set for a hearing. Rather than addressing and deciding Ms. Bell's motion to amend, the trial court entered an order three days before the hearing on Mr. Goforth's summary judgment motion indefinitely continuing Ms. Bell's motion to amend. As a result of this order, all the claims between the parties have not been fully and finally resolved because the trial court has yet to act on Ms. Bell's motion to amend her complaint. The trial court should have addressed Ms. Bell's motion to amend before acting on Mr. Goforth's motion for summary judgment. The outcome of Ms. Bell's motion could have had a significant effect on this litigation, especially if Mr. Goforth's statute of limitations defense were eventually found to be without merit.

It was unnecessary for us to address Mr. Goforth's statute of limitations defense in the context of Ms. Bell's claims based on the sale of Comprehensive Therapies because Mr. Goforth was not involved in the sale of Comprehensive Therapies. The same does not hold true with regard to

the claims in Ms. Bell's proposed amended complaint because these claims focus on Mr. Goforth's role with regard to the sale of Century Health Services' assets and stock, rather than the assets and stock of Comprehensive Therapies. Mr. Goforth, by his own admission, played a direct role in the sale of Century Health Services' assets and stock and also personally profited from the sale. Accordingly, we will address Mr. Goforth's statute of limitations defense in the context of the allegations in the proposed amended complaint.

B.

The applicable statute of limitations for actions under Tenn. Code Ann. § 29-12-101 depends on the nature of the property at issue. When the property is personal property, the three-year statute of limitations in Tenn. Code Ann. § 28-3-105 is applicable.[12] *Howell v. Thompson*, 95 Tenn. 396, 402, 32 S.W. 309, 310 (1895); *United Nat'l Real Estate, Inc. v. Thompson*, 941 S.W.2d 58, 62 (Tenn. Ct. App. 1996). The cause of action accrues and the statute begins to run when the fraudulent transfer occurs.

Ms. Bell does not dispute the choice of Tenn. Code Ann. § 28-3-105 as the appropriate statute of limitations in this case, nor does she dispute that the cause of action accrues and the statute begins to run when the property at issue is conveyed. Instead, she asserts that two tolling principles are applicable in this case and that either of these principles would have prevented the statute of limitations from barring her claim. The two principles on which Ms. Bell relies are the discovery rule and tolling that arises when a defendant fraudulently conceals a cause of action from the plaintiff.

The Discovery Rule

We will first address the application of the discovery rule to this case. Even though the Tennessee Supreme Court has not held that the common-law discovery rule applies to claims brought under Tenn. Code Ann. § 29-12-101, we have no doubt that it will do so when presented with the opportunity. The policies favoring the discovery rule outweigh those supporting the strict application of the statute of limitations. *See Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d at 620 (the application of the discovery rule requires consideration of the specific statutory language at issue and balancing of the policies furthered by the discovery rule against the policies on which statutes of limitation are based).

While nothing in Tenn. Code Ann. § 28-3-105 requires or even suggests the availability of the discovery rule with regard to fraudulent transfer claims, *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d at 620-621, the Tennessee General Assembly has explicitly included the discovery rule in Tenn. Code Ann. § 66-3-310(1), the statute of limitations provision governing fraudulent transfer

[12] Under Tennessee's current version of the Uniform Fraudulent Transfer Act, actions to set aside transfers made with actual intent to hinder, delay, or defraud a creditor may be filed within four years after the transfer was made or, if later, within one year after the transfer was or reasonably could have been discovered. Tenn. Code Ann. § 66-3-310(1). These amendments took effect on July 1, 2003. Ms. Bell filed her action in this case approximately fourteen months before this Act took effect.

claims similar to those being asserted in this case. Permitting persons filing fraudulent transfer claims under Tenn. Code Ann. § 29-12-101 to assert the discovery rule is entirely consistent with the nature of the conduct giving rise to a typical fraudulent transfer claim. Most commonly, persons engaging in a fraudulent transfer do not publicize the transaction, and therefore, creditors whose interests are prejudiced by the transfer will not be aware of their injury until after it has occurred.

Based on the discovery rule, Ms. Bell's fraudulent transfer claim accrued and the statute of limitations began to run either when she discovered the transaction at issue or when, in the exercise of reasonable diligence, she should have discovered the transaction. *Gibson v. Trant*, 58 S.W.3d 103, 117 (Tenn. 2001); *Hunter v. Brown*, 955 S.W.2d at 51. The statute of limitations was tolled only as long as Ms. Bell had no knowledge of the sale of the assets or stock of the corporations and, as a reasonable person, would not have been put on inquiry notice. *Potts v. Celotex Corp.*, 796 S.W.2d 678, 680 (Tenn. 1990).

It is uncontradicted that the Secretary of State revoked Comprehensive Therapies' charter on September 18, 1998. Thus, from and after September 18, 1998, any person inquiring into the status of Comprehensive Therapies would have discovered that its corporate charter had been revoked. Ms. Bell could have easily searched the public records in the Secretary of State's office to discover this information. Instead, she waited to track down the defendants to hear first hand that Comprehensive Therapies had been liquidated. It cannot be argued that Ms. Bell's failure to discover the 1996 transfer of Comprehensive Therapies' assets and holdings until January 2001 was reasonable.[13]

Fraudulent Concealment Tolling

The running of a statute of limitations may also be tolled when the defendant fraudulently conceals a cause of action from the plaintiff. *Ray v. Scheibert*, 224 Tenn. 99, 102, 450 S.W.2d 578, 380-81 (1969). Plaintiffs seeking to take advantage of fraudulent concealment tolling must establish (1) that the defendant affirmatively concealed the cause of action or remained silent and failed to disclose material facts despite a duty to do so, (2) that the plaintiff could not have discovered the cause of action despite exercising reasonable care and diligence, (3) that the defendant had knowledge of the facts giving rise to the cause of action, and (4) that the defendant concealed material facts from the plaintiff by withholding information or making use of some device to mislead the plaintiff or by failing to disclose information when he or she had a duty to do so. *Shadrick v. Coker*, 963 S.W.2d 726, 735-36 (Tenn. 1998); *Sibley v. McCord*, 173 S.W.3d 416, 420 (Tenn. Ct. App. 2004).

Ms. Bell failed to present evidence that Mr. Goforth had any obligation to notify her of the sale of the assets and stock of Comprehensive Therapies or that he did anything to conceal this sale from her. Mr. Goforth had no connection with Comprehensive Therapies when its owners sold the corporate assets in late 1996, and thus he had no obligation to provide the corporation's creditors

[13]The same reasoning would also apply to fraudulent transfer claims involving the sale of the assets and stock of Century Health Services. The Secretary of State's records show that this corporation's charter was dissolved on September 19, 1997, thereby putting Ms. Bell on inquiry notice regarding the status of the corporation's assets.

with the notice required by either Tenn. Code Ann. § 48-24-106 (2002) or Tenn. Code Ann. § 48-24-107 (2002). The record contains no evidence of any conduct on Mr. Goforth's part that obstructed Ms. Bell's ability to discover in a timely manner that the assets of Comprehensive Therapies had been sold in 1996 and the corporation's charter had been revoked in 1998.

The undisputed evidence supports only one conclusion. Ms. Bell failed to exercise due diligence to discover the sale of Comprehensive Therapies. A reasonable person would have begun investigating the status of Comprehensive Therapies when it became apparent that Comprehensive Therapies was not defending itself during the Title VII suit. Ms. Bell certainly should have taken steps to ascertain Comprehensive Therapies' status as soon as she received the default judgment in February 1999. Further, Ms. Bell has presented no evidence of any fraudulent concealment by the defendants to excuse her lack of knowledge. Therefore, the exceptions to the statute of limitations under the discovery rule and fraudulent concealment will not apply to her case.[14]

V.

We affirm the March 31, 2004 dismissal of Ms. Bell's complaint and remand this case to the trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to Deborah Bell and her surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.

[14]Even though Mr. Goforth played an active role in the sale of Century Health Services and personally profited from the transaction, the same reasoning applies to Ms. Bell's fraudulent transfer claims involving the sale of the assets and stock of Century Health Services. At the very latest, the dissolution of the corporation in September 1997 put Ms. Bell on inquiry notice regarding the status of the corporation's assets.